

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
REGENT MUSIC CORPORATION, :

Plaintiff, :

-against- :

REPLY AFFIDAVIT
07 Civ. 9510 (LLS)(AJP)

SUGAR HILL MUSIC PUBLISHING LTD.,:
and JOSEPH ROBINSON, JR.

Defendants. :

-----X

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

STEWART L. LEVY, being duly sworn, deposes and says:

1. I am a member of Eisenberg Tanchum & Levy, the attorneys for plaintiff Regent Music Corporation ("Regent") in this action. I am fully familiar with the facts set forth in this affidavit.
2. This affidavit is submitted to correct a misstatement contained in the memorandum submitted by defendants in opposition to Regent's motion seeking reconsideration of this Court's dismissal without prejudice of the complaint in this action.
3. Contrary to Defendants' contention, Regent has indeed filed with the Copyright Office the assignment of copyright concerning the composition, "Apache."
4. In fact, Regent has filed two such assignments: (a) the first, being the contractual assignment by the author of the ownership rights in the song to Francis Day & Hunter, Ltd. (annexed hereto as Exhibit A) and (b) the second, being the subpublishing agreement between Francis Day & Hunter, Ltd. and Regent pursuant to which Regent is appointed Francis Day & Hunter, Ltd's agent to enforce its copyrights in the Composition (annexed

(annexed hereto as Exhibit B).

5. The fact that the Assignments were only recently filed in the wake of the Court's dismissal order does not detract from the fact that assignments have been filed.
6. Moreover, contrary to defendants' claim, the February 27, 2008 letter from the Copyright Office was not submitted as new evidence in connection with the motion, but only to the extent that it contained the Court's memo endorsement granting leave to file the motion.
7. It is disingenuous of defendants' to protest the annexation of that letter and then to misquote it. Had defendant quoted the entire relevant portion of the letter they would have added the following statement: "In general, recordation under section 205 ["Recordation of transfers and other documents"] is the means provided in the copyright law for **updating** ownership changes in works under federal copyright protection." (emphasis added) There is no time limit for such recordations nor do such recordations affect the validity of an assignment – they merely notify third parties of constructive notice of ownership claims [17 U.S.C. §205(c)].

WHEREFORE, I respectfully request that the Court grant Regent's motion for reconsideration and vacatur of its Order.

Sworn to before me this
14th day of March, 2008


Notary Public

JAMES E. DOHERTY
Notary Public, State of New York
No. 02DO5050294
Qualified in New York County
Commission Expires October 10, 2009


Stewart L. Levy

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For current fees check the Copyright Office website at
www.copyright.gov, write to the Copyright Office,
or call (202) 707-3000.

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To the Register of Copyrights: Please record the accompanying original document or properly certified copy thereof.

1 First party name given in the document Jerry Lordan

(IMPORTANT: Please read instruction for this and other spaces.)

2 First title given in the document Apache**3** Total number of titles in the document 1**4** Amount of fee calculated \$95**5** Fee enclosed ☐ Check ☐ Money order☒ Fee authorized to be charged to Copyright Office deposit accountDeposit account number DA 020036Deposit account name Regent Music Corp.**6** Completeness of document ☒ Document is complete by its own terms ☐ Document is not complete. Record "as is."

IMPORTANT NOTE: A request to record a document "as is" under 37 CFR §201.4(c)(2) is an assertion that: (a) the attachment is completely unavailable for recordation; (b) the attachment is not essential to the identification of the subject matter of the document; and (c) it would be impossible or wholly impracticable to have the parties to the document sign or initial a deletion of the reference to the attachment.

7 Certification of Photocopied Document Complete this certification if a photocopy of the original signed document is substituted for a document bearing the actual original signature.**NOTE:** This space may not be used for documents that require an official certification.

I declare under penalty of perjury that the accompanying document is a true and correct copy of the original document.

Signature Caitlin Date 3/5/08Duly authorized agent of Francis, Day & Hunter, Ltd.**8** Return to: Name Regent Music Corp.Number/street 630 Ninth Avenue Apt/suite 1004City New York State NY Zip 10036Phone number 212-246-3333 Fax number 212-262-6299Email caitlin@arcmusic.com

SEND TO: Library of Congress, Copyright Office, Documents Recordation Section, 101 Independence Avenue SE, Washington, DC 20559-6000

INCLUDE ALL THESE TOGETHER: (1) Two copies of this form; (2) payment from a deposit account or by check/money order payable to Register of Copyrights; and (3) your document.



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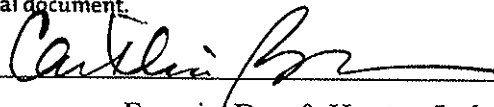
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To the Register of Copyrights: Please record the accompanying original document or properly certified copy thereof.

1	First party name given in the document	<u>Jerry Lordan</u>
2	First title given in the document	<u>Apache</u>
3	Total number of titles in the document	<u>1</u>
4	Amount of fee calculated	<u>\$95</u>
5	Fee enclosed	<input type="checkbox"/> Check <input type="checkbox"/> Money order <input checked="" type="checkbox"/> Fee authorized to be charged to Copyright Office deposit account Deposit account number <u>DA 020036</u> Deposit account name <u>Regent Music Corp.</u>
6	Completeness of document	<input checked="" type="checkbox"/> Document is complete by its own terms <input type="checkbox"/> Document is not complete. Record "as is." IMPORTANT NOTE: A request to record a document "as is" under 37 CFR §201.4(c)(2) is an assertion that: (a) the attachment is completely unavailable for recordation; (b) the attachment is not essential to the identification of the subject matter of the document; and (c) it would be impossible or wholly impracticable to have the parties to the document sign or initial a deletion of the reference to the attachment.
7	Certification of Photocopied Document	Complete this certification if a photocopy of the original signed document is substituted for a document bearing the actual original signature. NOTE: This space may not be used for documents that require an official certification. I declare under penalty of perjury that the accompanying document is a true and correct copy of the original document. Signature <u></u> Date <u>3/5/08</u> Duly authorized agent of <u>Francis, Day & Hunter, Ltd.</u>
8	Return to:	Name <u>Regent Music Corp.</u> Number/street <u>630 Ninth Avenue</u> Apt/suite <u>1004</u> City <u>New York</u> State <u>NY</u> Zip <u>10036</u> Phone number <u>212-246-3333</u> Fax number <u>212-262-6299</u> Email <u>caitlin@arcmusic.com</u>

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No. A 896

This Assignment is made the ELEVENTH day

of DECEMBER 1959 BETWEEN JERRY LORDAN

of 40A, Dennington Park Road, London, N.W.6.

23242

(hereinafter called "the Assignor(s)") of the one part and FRANCIS, DAY & HUNTER LTD. of 138/140 Charing Cross Road, in the County of London (hereinafter called "the Publishers") of the other part **WITNESSETH** that in consideration of the payment by the Publishers to the Assignor(s) of the sum of 1/- (One Shilling) (the receipt whereof is hereby acknowledged) on account of the Royalties and Fees mentioned in the Schedule hereto the Assignor(s) hereby Assign(s) to the Publishers ALL the Copyright as defined by the Copyright Act 1956, throughout the territory to which that Act may now or may at any time hereafter extend, together with all other rights of a like nature as are now conferred by the laws in force in all other territories throughout the world, including the renewal copyright as conferred by the law of the United States of America, and such other rights as may hereafter be conferred or created by law or international arrangement or convention in any part of the world whether by way of new or additional rights not now comprised in Copyright or by way of extension of the period of then or now existing rights of and in the Musical Composition entitled

"APACHE!"

as "the said work(s)" **TO HOLD** the same unto the Publishers their successors and assigns absolutely AND the Assignor(s) hereby agree(s) on demand to execute and sign any other documents and to do all other acts and things which may hereafter be required of the Assignor(s) for vesting in the Publishers the premises expressed to be hereby assigned AND the Assignor(s) hereby warrant(s) and declare(s) that the said work is a new and original unpublished work and does not infringe the copyright in any other work and that he (they) the Assignor(s) has (have) good right and full power to assign to the Publishers free from all encumbrances the premises expressed to be hereby assigned and every of them in the manner aforesaid. AND IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £3,500.

AS WITNESS the hands of the parties hereto the day and year first above written.

The Schedule above referred to.

Sheet Music Royalties.

10% (Ten per cent.) of the marked retail selling price of all copies of the said work(s) sold (except as hereafter provided) but so that no Royalty shall be payable on the first month's issue of sample copies of the said work(s).

50% (Fifty per cent.) of all sums received by the Publishers on the sale of Foreign and Colonial Editions of the said Work(s).

The Publishers shall have the right to include the said work(s) in any Album, Folio or Newspaper and to licence others to make a similar use upon payment of £5 (five pounds) in lieu of Royalties in respect of the inclusion thereof in such Album, Folio or Newspaper.

No Royalties shall be payable on Orchestral, Military and Brass Band Arrangements or professional copies of the said work(s), and the Publishers shall have the right to use the melody with words of the chorus thereof in any separate musical publication, and to reprint the words thereof without the music free from Royalty or other consideration.

Mechanical Royalties.

50% (Fifty per cent.) of all Royalties received by the Publishers for reproductions of the said work(s) in connection with the manufacture of records (other than for use in or in connection with cinematograph films and television films) for sale to the Public.

No Royalties shall be payable to the Assignors in respect of the inclusion of the said work(s) in Medley Arrangements.

Synchronization Fees.

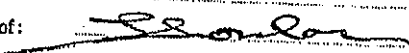
50% (Fifty per cent.) of all royalties and fees received by the Publishers for the right to use the said work(s) in or in connection with any cinematograph film or television film.

Performing Broadcasting and Rediffusion Fees.

These are collected by the Performing Right Society Ltd. and are paid direct to its Members in accordance with the Rules laid down by that Society, and it is agreed that the Assignor's share shall be 50 per cent. and the Publisher's share 50 per cent.

Generally.

All Royalties and fees payable by the Publishers to the Assignor(s) by virtue of this Assignment shall be divided between the Assignor(s) in the following manner:—

SIGNED by the Assignor(s) in the presence of: 

SIGNED by the duly authorised agent of the Publishers in the presence of:

For and on behalf of
FRANCIS, DAY & HUNTER LTD.


Director.

Exhibit B



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(IMPORTANT: Please read instruction for this and other spaces.)3 Total number of titles in the document 14 Amount of fee calculated \$955 Fee enclosed
☐ Check ☐ Money order
☒ Fee authorized to be charged to Copyright Office deposit accountDeposit account number DA 020036Deposit account name Regent Music Corp.6 Completeness of document
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**Document Cover Sheet**

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AGREEMENT made this 22nd day of July One thousand nine hundred and sixty, by and between FRANCIS, DAY & HUNTER, LTD., of 138-140 Charing Cross Road, London, W.C.2, England (referred to as FRANCIS DAY) and REGENT MUSIC CORPORATION, of 1619 Broadway, New York 19, N.Y., U.S.A. (referred to as REGENT).

In consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, receipt whereof is hereby acknowledged by each of the parties hereto, and of the premises it is agreed:

FIRST: Francis Day warrants and represents that it is the sole copyright proprietor and is possessed of all rights and interests among other territories in the United States of America, its territories and possessions, and the Dominion of Canada, (hereinafter referred to as the Licensed Territory) free and clear of all rights, interests, claims and encumbrances in and to the musical composition entitled:

" APACHE "

(Jerry Lordan)

(hereinafter referred to as the Said Composition), except the performing right which has been assigned by Francis Day to the Performing Right Society Ltd., of England, for all countries and has been vested by that Society in CAPAC in Canada. Francis Day warrants, however, that PRS, pursuant to its current contract with Broadcast Music Inc. (herein-

after called BMI) with which Regent is affiliated, will forthwith on the registration with PRS of this contract transfer to BMI for the U.S.A., its territories and possessions, only, the control of the performing right, including the sole right to collect performing right fees in the U.S.A. its territories and possessions, only, in respect of the Said Composition for the period during which this agreement is effective, or until Regent ceases to be affiliated with BMI whichever is the shorter period.

SECOND: Francis Day hereby constitutes Regent the sole and exclusive selling agent of the above composition, such sole and exclusive selling agency involving the following rights in Said Composition :

- (a) The sole and exclusive right to print, reprint publish, copy and multiply printed copies and to vend and sell the same in any and all parts of the Licensed Territory.
- (b) Subject to any rights of PRS the sole and exclusive benefit of public performance (including Broadcasting and Television).
- (c) The sole and exclusive right of recording and reproduction of phonograph records, music rolls and transcriptions, and all future developments of such, similar and kindred arts and to licence such rights in and for the Licensed Territory.
- (d) The right to grant non-exclusive licences for the recording and use of Said Composition in any and all countries throughout the world in and in connection with motion pictures originating or produced in the Licensed Territory.

THIRD: Regent agrees to pay to Francis Day the

following monies as royalties :-

- (a) 10% of the marked retail selling price of each piano copy and each orchestration of Said Composition sold by Regent paid for and not returned in the U.S.A. and Canada.
- (b) 50% of all net monies received by Regent from the licencing in the U.S.A. and Canada of any rights acquired by it under Paragraph "SECOND" subdivision (c) thereof.
- (c) In respect of all licences issued by Regent under paragraph "SECOND" subdivision (d) thereof Regent shall pay to Francis Day 50% of the net monies received by it for any countries of the Licensed Territory and 100% of all net monies received by it for all countries outside of the Licensed Territory; and
- (d) \$25.00 for the use of Said Composition in each album, book or folio, in lieu of any other payment thereafter.

FOURTH: With reference to performing and broadcasting fees, it is agreed as follows:-

(a) The division of the performing right fees collected and allocated by BMI in the U.S.A. in respect of the Said Composition shall be made by BMI, which shall pay their respective shares direct to PRO on behalf of Francis Day and the writers of the Said Composition and to Regent, and neither Francis Day nor Regent shall have any liability each to the other in respect of such fees.

(b) The division of the performing right fees collected and allocated by CAPAC in Canada in respect of the Said Composition shall be made by CAPAC and it is agreed that Regent shall receive 50% of the publisher's share and that Regent will

arrange for such share to be paid to it through an agent who is a member of CAPAC or any other Society to which CAPAC is affiliated. The remaining 50% of the publisher's share shall be remitted to PRS on behalf of Francis Day, and neither Francis Day nor Regent shall have any liability each to the other in respect of such fees.

FIFTH: Regent will forward to Francis Day three copies of each edition of Said Composition published by Regent. Regent shall have the right to make and publish new arrangements, adaptations and versions of Said Composition and to alter, change, substitute and translate the lyrics and title thereof, all of the same to be copyrighted in the name of Francis Day.

SIXTH: All copies of Said Composition published under the authority of this Agreement shall bear all statements necessary under the laws of the Licensed Territory including due and proper notice of copyright in Francis Day.

SEVENTH: Regent agrees to pay to Francis Day at the execution of this agreement the sum of \$750.00 (seven hundred and fifty Dollars) on account and in advance of the aforementioned royalties and no further sums shall be payable by Regent until the whole amount of \$750.00 (seven hundred and fifty Dollars) has been recouped by royalty earnings.

EIGHTH: True and correct accounts shall be kept by Regent in respect to Said Composition and a statement of

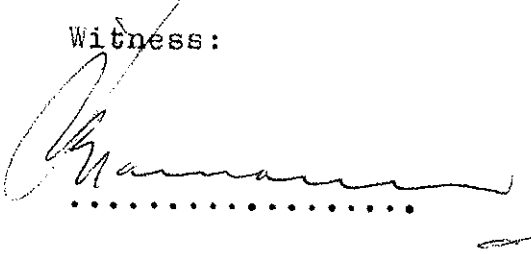
such account, as of December 31st and June 30th in each year shall be forwarded within sixty days after each of said dates by mail to Francis Day and after the minimum compensation of Regent and all taxes thereof shall have been earned, recouped and deducted by Regent all monies thereafter to become due and payable by Regent to Francis Day under this agreement shall be paid upon the rendition of such semi-annual statements for each preceding semi-annual period.

NINETH: Francis Day hereby authorises, empowers and vests in Regent the right to enforce and protect all rights to Said Composition and the copyrights therein in the Licensed Territory, and to join the copyright proprietor thereof as party plaintiff or defendant in all suits and proceedings, and to proceed with and dispose of the same with the same force and effect as if Regent was the copyright proprietor thereof, but all at the expense of Regent.

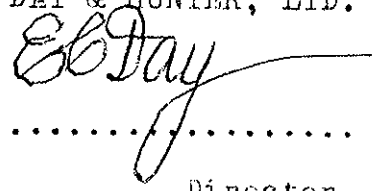
TENTH: The right acquired by Regent to Said Composition under this agreement shall be for the terms of all copyrights thereof for the Licensed Territory to the extent that Francis Day may now or at any time hereafter be possessed of such rights.

IN WITNESS WHEREOF, the parties hereto have
executed this agreement the day and year first above written.

Witness:


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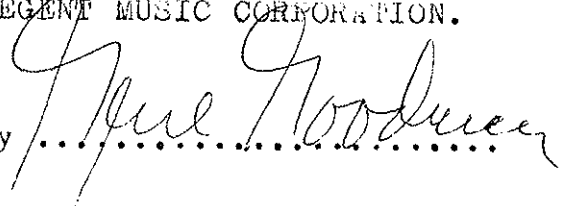
For and on behalf of
FRANCIS, DAY & HUNTER, LTD.


By
Director.

Witness:

.....

For and on behalf of
REGENT MUSIC CORPORATION.


By